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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,895	11/17/2003	Jean-Louis Dasseux	9196-030-999	5269
20583	7590	07/25/2007		
JONES DAY 222 EAST 41ST ST NEW YORK, NY 10017			EXAMINER SHIBUYA, MARK LANCE	
			ART UNIT 1639	PAPER NUMBER
			MAIL DATE 07/25/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/715,895	<b>Applicant(s)</b> DASSEUX ET AL.	
	<b>Examiner</b> Mark L. Shibuya, Ph.D.	<b>Art Unit</b> 1639	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 April 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 57-79 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 57-79 is/are rejected.
- 7) ☒ Claim(s) 79 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. <u>7/12/07</u> |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Claims 57-79 are pending and examined.

#### ***Nucleotide and/or Amino Acid Sequence Disclosure***

2. This application contains sequence disclosures that are encompassed by the definitions for nucleotide and/or amino acid sequences set forth in 37 CFR 1.821(a)(1) and (a)(2). However, this application fails to comply with the requirements of 37 CFR 1.821 through 1.825.

In particular, claim 57, drawn to a peptide sequence, has been amended to remove the sequence identifier, thereby throwing the claim into non-compliance. The examiner respectfully suggest the following amendment:

The limitation "--(SEQ ID NO: 4)--" is inserted after "PVLDLFRELLNELLEALKQKLK" in line 2 of claim 1.

#### ***Interview Summary***

3. Among other matters, as set forth in the attached interview summary, applicant has apparently agreed to send in a paper making clear the representation before the Office, for this application. However, as of the instant correspondence, the examiner respectfully notes that the representation of record has not been changed.

***Priority***

4. This application, filed 11/17/2003, states that it is a continuation of 09/453,840, filed 12/01/1999, now US Patent 6,716,816; which is a divisional of 08/940,095, filed 9/29/1997, now US Patent 6,004,925.

***Specification***

5. Applicant is respectfully requested to update the status of the priority documents referred to in the first sentence of the specification, pursuant to 35 USC 120, and if needed.

***Withdrawn Claim Objections/Rejections***

6. The following objections/rejections to the claims are withdrawn in view of applicant's arguments, amendments to the claims, and terminal disclaimers, entered 4/18/07.

7. Claims 57-79 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claims 57-79 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over:

a. claims 1-23 of US 6,844,327;

- b. claims 1-48 of U.S. Pat. No. 6,753,313;
- c. claims 1-58 of U.S. Pat. No. 6,716,816;
- d. claims 1-36 of U.S. Pat. No. 6,630,450;
- e. claims 1-38 of U.S. Pat. No. 6,602,854;
- f. claims 1-34 of U.S. Patent No. 6,573,239;
- g. claims 1-48 of U.S. Patent No. 6,573,239;
- h. claims 1-9 of U.S. Pat. No. 6,518,412;
- i. claims 1-21 of U.S. Pat. No. 6,376,464;
- j. claims 1-21 of U.S. Pat. No. 6,329,341;
- k. claims 1-49 of U.S. Patent No. 6,046,166
- l. claims 1-54 of U.S. Patent No. 6,037,323; and
- m. claims 1-58 of U.S. Pat. No. 6,004,925.

9. Claims 57-79 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over:

- a. claims 76, 78-103 of copending Application No. 09/865,989 (PG PUB: 2004/0029807 A9);
- b. claims 1, 3-17 and 36 of copending Application No. 10/099,574 (PG PUB: 2003/0060604A1);
- c. claims 1, 3-8, 12-17, 29, 34, 35, 37, 42, and 57 of copending Application No. 10/099,836 (PG PUB 2003/0203842A1);

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- d. claims 53-58, 60-83 of copending Application No.10/801,897 (PG PUB: 2004/0198662A1);
- e. claims 1, 19-21, 28, 36, 41, 43-46, 53 and 56-57 of copending Application No.10/937,767 (PG PUB: 2005/0080013 A1; and
- f. Claims 1, 19-21, 28, 36, 41, 43-46, 53, 56 and 57 of copending Application No.11/482,292.

### ***Claim Objections***

- 10. Claim 79 is objected to because of the following informalities: Claim 79 depends from claim 88; however there is no claim 88. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 101***

- 11. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

- 12. Claims 57-79 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

This rejection is necessitated by applicant's amendments to the claims.

Claim 57 states: "An ApotA-I agonist comprising the peptide PVLDLFRELLNELLEALKQKCLK (SEQ ID NO: 4)." The Specification at p. 17, lines 30-33, states that "[t]he peptides of the invention were designed based on the supposed helical structure and amphipathic properties of the 22 amino acid consensus sequence

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which was derived from the helical repeats of ApoA-I." Thus claims 57-62 appear to encompass a product of nature, and so are non-statutory subject matter.

The examiner respectfully suggests the following claim amendment:

The term --isolated-- is inserted after "An" in the first line of claim 1.

### ***Conclusion***

13. Claims 57-79 stand finally rejected. Claim 79 is objected to.

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Shibuya, whose telephone number is (571) 272-0806. The examiner can normally be reached on M-F, 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Doug Schultz can be reached on (571) 272-0763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Mark L. Shibuya, Ph.D.  
Primary Examiner  
Art Unit 1639